IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CSX TRANSPORTATION, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 05-00338 (EGS)
	)	
WILLIAMS *et al.*	)	
	)	
Defendants.	)	

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF CSXT'S MOTION FOR SUMMARY JUDGMENT

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* Authorities upon which we chiefly rely are marked with an asterisk. *See* LCvR 7(a).

Plaintiff CSX Transportation, Inc. ("CSXT" or "Plaintiff") respectfully moves this Court for summary judgment under Federal Rule of Civil Procedure 56 and Local Civil Rule 56.1, and provides herewith a Statement of Material Facts as to Which There Is No Genuine Issue. Summary judgment is warranted because the statutory and constitutional issues presented are purely legal in nature and there are no genuinely disputed issues of material fact.

Plaintiff asks this Court to declare the Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005, D.C. Bill 16-77 (the "District Act") invalid because it (1) is preempted by the express preemption provisions of three federal statutes by virtue of the Supremacy Clause of the U.S. Constitution (Art. VI, ¶ 2)—the Federal Railroad Safety Act ("FRSA"), 49 U.S.C. § 20106; the Hazardous Materials Transportation Act ("HMTA"), 49 U.S.C. § 5125(a) and (b); and the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), 49 U.S.C. § 10501(b); (2) was passed as an *ultra vires* act by the Council of the District of Columbia ("D.C. Council") contrary to the limited delegation of legislative authority given by Congress under the Home Rule Act; and (3) is *per se* invalid on its face under the Commerce Clause of the U.S. Constitution (Article I, § 8, cl. 3). The proper relief upon a finding that a state or local law is unconstitutional, preempted, or *ultra vires* is a declaration of invalidity and a permanent injunction against the implementation and enforcement of such a null and void act.

THE GOVERNING STANDARD FOR SUMMARY JUDGMENT

The standard for granting summary judgment is familiar to the Court. Summary judgment is to be granted if the moving party shows "that there is no genuine issue as to

any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A party opposing summary judgment must offer evidence showing with specificity that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). There is no factual issue for trial here. This case poses purely legal issues, and "further litigation would put the parties to unnecessary expense and would also waste judicial resources." *Airlie Found., Inc. v. United States*, 826 F. Supp. 537, 548 (D.D.C. 1993) (internal quotation marks omitted).

INTRODUCTION

This case presents the purely legal question of whether the District of Columbia can seize the authority to prohibit the transportation of essential and lawful, albeit potentially hazardous, materials in interstate commerce by rail through the District of Columbia contrary to the express will of the U.S. Congress and the clear directive of the United States Constitution. Four federal statutes and the Constitution dictate that that authority resides in the Federal Government. No state or local government may erect a wall to interstate commerce in any lawful product, including hazardous materials, at its borders. No state or local government may unilaterally direct that lawful goods, including hazardous materials, must detour around the jurisdiction and through other jurisdictions. The regulation of interstate rail shipments of materials, including in particular hazardous materials, is quintessentially a matter for the Federal Government. The United States Constitution commits to Congress the power to regulate interstate commerce, precisely to permit the free flow of goods and to prevent any state or local jurisdiction from creating obstructionist roadblocks.

It is not necessary or appropriate for this Court to determine as a factual matter the safest and most secure way to transport hazardous materials in interstate commerce. It is not necessary or appropriate for this Court to determine whether the rerouting of certain hazardous materials around certain urban areas is a good policy or a poor policy. These are factual and policy questions to be decided by the federal agencies with authority over freight rail transportation, and they remain subject to further direction by Congress if Congress determines that existing statutes are not adequate for the task. This Court is simply not the appropriate forum to debate the substance of these factual and policy issues.

The District Act is unconstitutional on its face and preempted. In purpose and effect, it is a direct (and thus impermissible) interference with interstate commerce. CSXT is entitled to summary judgment in its favor whether the District Act would require detouring 100 cars or 10,000 cars, or whether the required detour would be 100 miles long or 1,000 miles long. CSXT is entitled to summary judgment in its favor even if the District promulgated rules that would allow certain shipments to pass through the District subject to a permit. In order to grant summary judgment, this Court does not have to quantify the burden on shippers of the Banned Materials, users of the Banned Materials, or the common carrier CSXT. Nor does this Court have to decide the question of whether a mandated detour around the District of Columbia would increase safety and security, as the District suggests, or "negatively affect[] the United States' interests in national security, public safety, public health, and a strong economy," as the United States has concluded. Statement of Interest of the United States of America (filed and served Feb. 25, 2005) at 8. This Court need only decide that it is for the Federal

Government to make this assessment, not the District of Columbia (or any other state or local jurisdiction acting unilaterally).

As we demonstrated in our Motion for Preliminary Injunction, Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction ("P.I. Mem.") and exhibits thereto (filed and served Feb. 22, 2005) (collectively the "Preliminary Injunction Papers"),[1] the District Act is *per se* invalid under the Commerce Clause and is expressly preempted by three federal statutes. We also showed that the passage of the District Act exceeds the authority of the D.C. Council under the Home Rule Act. Any one of these grounds, standing alone, is a sufficient basis to declare the District Act invalid. All of these grounds present pure issues of law.

These legal issues are appropriately and routinely decided by summary judgment. *See, e.g., Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363 (2000) (upholding grant of summary judgment to plaintiff where Massachusetts foreign trade law was preempted by federal law); *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine*, 520 U.S. 564 (1997) (upholding grant of summary judgment to plaintiffs where state tax exemption was a *per se* violation of the Commerce Clause); *Weber v. Heaney*, 995 F.2d 872 (9th Cir. 1993) (upholding summary judgment for plaintiffs where state campaign reform law was preempted by federal law); *Parker v. Horton's Funeral Service, Inc.*, 200 F.R.D. 1 (D.D.C. 2001) (striking down on summary judgment a D.C. statute found to be unconstitutional on its face); *325-343 E. 56th Street Corp. v. Mobil Oil Corp.*, 906 F.

[1] Consistent with the Court's direction on February 24, 2005, CSXT incorporates by reference the arguments and authorities in its Preliminary Injunction Papers as if fully set forth herein.

Supp. 669, 674 & n.3 (D.D.C. 1995) (citing string of authority for proposition that issues of statutory interpretation are particularly appropriate for summary judgment).

STATEMENT OF RECENT DEVELOPMENTS

Since we filed our Preliminary Injunction Papers, a number of additional developments have occurred which underscore the need for a prompt decision from this Court declaring the District Act invalid.

U.S. Statement of Interest. The Department of Justice, on behalf of the Department of Homeland Security and the Department of Transportation, filed a Statement of Interest of the United States of America on February 25, 2005 ("U.S. Statement"). The U.S. Statement confirms and amplifies the legal positions CSXT set forth in its Preliminary Injunction Papers. The United States explains in that filing that the District Act conflicts with federal regulations governing hazardous materials transportation, is preempted by federal statutes, and violates the Commerce Clause. The U.S. Statement also clearly states that the District Act is inconsistent with the public interest when the interests of all (not just residents of the District of Columbia) are taken into account, and describes the damage the District Act, and similar acts, would inflict on the security, safety, health and economy of the nation:

> The essentially federal nature of rail transportation has been repeatedly recognized and addressed by Congress, which has delegated national rail oversight for safety, security, and commerce matters to three Federal agencies – DOT, DHS and the Surface Transportation Board ("STB"). Under the regulatory approaches administered by those agencies, the regulation of hazardous materials shipments is accomplished at the federal, not a local, level.
>
> . . . .

> Here the United States has a keen interest in the security of hazardous materials transportation for obvious national security and public safety reasons. The United States is also interested in promoting efficiency in the transportation of hazardous materials because many such materials are vital to the public health and the national economy. For example, the nation's supply of clean drinking water is dependent upon timely shipment of large quantities of chlorine, a hazardous material, and other purifying chemicals that may be categorized as hazardous materials. And the United States has an interest in protecting and preserving federal prerogatives in areas governed by federal laws and regulations.
>
> **The D.C. Act would negatively affect the United States' interests in national security, public safety, public health, and a strong economy.** The risks associated with the transportation of hazardous materials correspond to the amount of time in transit. . . .
>
> [B]y increasing the total transit time and distance, the D.C. Act would have the effect of increasing the aggregate risk associated with the transportation of hazardous materials. Further, the D.C. Act would shift that increased risk to other parts of the country, through which carriers would be obliged to re-route hazardous materials in order to comply with the Act. Those jurisdictions, and perhaps others, might reasonably be expected to respond by enacting their own bans, further disrupting hazardous materials transportation as well as rail transportation in general.

U.S. Statement at 2-3, 8-9 (emphasis added). The position of the Department of Homeland Security and Department of Transportation is no surprise. Representatives of these departments clearly explained to the D.C. Council, before it enacted the District Act, that such parochial, protectionist legislation posed a danger to the nation's safety and security. *See* P.I. Mem. at 9-11.

Members of Congress. Three members of Congress, including the Chairman of the House Committee with authority over the District of Columbia, have also expressed

to the Surface Transportation Board ("STB") their belief that the District Act is preempted by federal law.

Representative Tom Davis, Chairman of the House Committee on Government Reform with jurisdiction over the District of Columbia, urged the STB to declare the District Act invalid:

> The Act seeks to challenge our nation's long-standing federal regulatory structure and establish a new precedent that will undermine the efficiency and efficacy of the national rail network . . . .
>
> . . . . [T]he intent of Congress is clear that the federal government is the exclusive authority on this issue.
>
> As the Chairman of the Committee on Government Reform, I have worked with the relevant federal officials, city officials, and private industry to ensure that necessary actions are taken to secure this important and sensitive rail corridor. While I share the concerns of the Council regarding the safety and security of their citizens and I understand that security plans and measures must be flexible and always take into account local issues and vulnerabilities specific to the region, the regulation of rail transportation is squarely within the jurisdiction of the federal government.

Letter from Rep. Tom Davis to Vernon A. Williams, Secretary, Surface Transportation Board (Feb. 22, 2005) (Exhibit 1 hereto).

Representative Steven C. LaTourette, Chairman of the House Subcommittee on Railroads, also wrote to the STB to urge that it declare the District Act invalid. Congressman LaTourette stated that the "D.C. Council has no authority to act in the hazardous materials transportation arena," and provided a concrete demonstration of why hazardous materials transportation must be regulated at the federal level:

> On a long-term basis, there is no question that the Act would greatly increase the transportation burden associated with moving the materials, and shift that burden

> to other jurisdictions, including my own hometown of Cleveland, OH. If CSXT is forced to re-route around the District of Columbia, trains carrying hazardous materials, going both North *and* South will go through Cleveland and other cities in Ohio, essentially doubling the hazardous materials traffic that goes through my district, and shifting the risk that the District of Columbia claims to its citizens, to the citizens of Ohio.

Letter from Rep. Steven C. LaTourette to W. Douglas Buttrey, Vice-Chairman, Surface Transportation Board (Feb. 23, 2005) (Exhibit 2 hereto) at 2.

Representative Corrine Brown, the Ranking Member of the House Subcommittee on Railroads, also wrote to the STB to urge that it declare the District Act invalid for similar reasons. *See* Letter from Rep. Corrine Brown to Roger Nober, Chairman, Surface Transportation Board (Feb. 17, 2005) (Exhibit 3 hereto).

Top Official for Capitol Security. U.S. Capitol Police Chief Terry Gainer, the official entrusted by the U.S. Congress to protect the safety and security of the Capitol building, has publicly stated that there is no need for the District legislation. He stated that he, and the Capitol Police Board on which he sits, are satisfied with the arrangements CSXT has made with appropriate federal authorities regarding the rail transportation in the District of Columbia of hazardous materials. *News Program* (WTOP-AM (CBS) radio broadcast, Mar. 2, 2005) (Exhibit 4 hereto).[2]

Amicus Briefs Filed by Other Railroads and Shippers. *Amicus* briefs were filed in support of CSXT's position by the Association of American Railroads, the Norfolk

[2] We explain in our Preliminary Injunction Memorandum that the District Act is not "necessary to eliminate or reduce an essentially local safety or security hazard" within the meaning of the Federal Railroad Safety Act, 49 U.S.C. § 20106(1). P.I. Mem. at 31. As demonstrated by the remarks of Chief Gainer, the security of the U.S. Capitol with respect to rail transportation of hazardous materials has not in fact escaped the attention of Congress.

Southern Railway Company, and the National Industrial Transportation League. The Court should note that railroads, shippers and the regulating agencies often have divergent interests on issues, but on this issue, all are unanimous in their views expressed to this Court—it is for the Federal Government to address hazardous materials transportation safety and security for the benefit of all, and not for local jurisdictions to divert the traffic into someone else's backyard.[3]

No Alternative Route on Norfolk Southern Lines. From the outset, proponents of the detour around the District have suggested that cars of the Banned Materials could be interchanged to Norfolk Southern, carried by Norfolk Southern on its lines west of the District, and then interchanged back to CSXT. CSXT demonstrated in its Preliminary Injunction Papers that this proposal is not feasible. *See* Affidavit of John M. Gibson, Jr. (Feb. 16, 2005) (Ex. 1 to P.I. Mem.) at ¶ 40 and Ex. G. In its *amicus* filing, Norfolk Southern clearly explains that it has no legal obligation to accept such cars and would not accept them:

> [A] carrier may divert its traffic to the lines of another railroad *only* if it has obtained the concurrence of that carrier to reroute the subject traffic. *See* 49 C.F.R. § 1034.1(b). NSR, whose lines would be the only feasible alternative routing for most, if not all, of this traffic, would *not* consent to any proposal to divert large volumes of CSXT hazardous materials traffic to NSR's lines, because such action would serve only to transfer the risk inherent in the movement of those shipments from the District to the communities through which NSR operates.

[3] A representative of a fourth major stakeholder, railway labor, also spoke out against the District Act at a public hearing of the D.C. Council Committee on Public Works and the Environment on January 23, 2004. *See* Written Testimony of James Stem, United Transportation Union, before the D.C. Council Committee on Public Works and the Environment, Public Hearing (Jan. 23, 2004) (Exhibit 5 hereto).

Amicus Curiae Norfolk Southern Railway Co.'s Memorandum of Points and Authorities in Support of CSX Transportation, Inc.'s Motion for Preliminary Injunction (filed and served Feb. 22, 2005) at 8-9.[4]

Copycat Legislation. In our Preliminary Injunction Papers, we observed that the District Act invited other local jurisdictions to follow with their own protectionist legislation. Pittsburgh had already made overtures that it would do so, *see* P.I. Mem. at 4 n.2, and it has since clarified its interest: "'We're following very closely to see what happens in D.C.,' said Pittsburgh Councilman Jim Motznik. 'If D.C. is allowed to legally reroute hazardous materials, we'll go forward with a resolution to do the same thing here in Pittsburgh.'" John Gallagher, *Pittsburgh Eyes Hazmat Ban*, Traffic World, Mar. 7, 2005. Philadelphia has also begun to study passage of parochial legislation similar to that adopted by the District of Columbia, expressly citing the District Act. *See* City Council's Resolution to Hold Investigative Hearings into CSX Railroad's Operations in Philadelphia (Feb. 17, 2005) (Exhibit 6 hereto). A ruling in favor of the District would promptly spark passage of similar local legislation that could well bring rail transportation in these essential commodities in the eastern half of the country to a halt.

D.C. Council Enactment of Temporary Legislation. On March 1, 2005, the D.C. Council passed the Terrorism Prevention in Hazardous Materials Transportation Temporary Act of 2005, Bill 16-78. Subject to mayoral approval and congressional

[4] We note this development for the Court given the District's repeated references to the Norfolk Southern lines, but whether cars of the Banned Materials could be interchanged for transport over Norfolk Southern lines between Petersburg, VA and Philadelphia, PA, or whether the cars would be detoured over CSXT's own lines, the District Act is in either case a direct and impermissible interference with interstate commerce.

review, this legislation would extend the prohibitions of the District Act beyond its 90-day effective period for an additional 225 days.

ARGUMENT

CSXT's Complaint and Preliminary Injunction Papers provided information to the Court regarding the history of the District Act, CSXT's rail operations, and the effect of the District Act on shippers of the Banned Materials, users of those materials, the common carrier CSXT, and the jurisdictions through which the Banned Materials would be detoured. Much of this information was provided for background context and in support of the elements that must be demonstrated in order to obtain a preliminary injunction. The facts needed to decide this motion for summary judgment, however, are few and indisputable. *See* accompanying Statement of Material Facts as to Which There Is No Genuine Issue.

CSXT's position that the District Act is invalid has been confirmed and supported by the United States in its Statement of Interest. CSXT is entitled to summary judgment based on each of five separate legal grounds.

I. THE DISTRICT ACT IS EXPRESSLY PREEMPTED BY THE FEDERAL RAILROAD SAFETY ACT.

We argued in our Preliminary Injunction Papers that the District Act is preempted under the express preemption provision of the Federal Railroad Safety Act of 1970, as amended, 49 U.S.C. § 20106. *See* P.I. Mem. at 26-33. The United States confirms this analysis. *See* U.S. Statement at 3-4, 9-13. The views of the U.S. Department of Homeland Security and the U.S. Department of Transportation as to the preemptive scope of the FRSA are entitled to great weight.

Under *Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837 (1984), a court first looks to whether a statute is unambiguous. *Id.* at 842. If so, "the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id.* at 842-43. If the statute is ambiguous, however, then the Court must determine "whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843.

We submit that the express preemption provision of the FRSA (like the express preemption provisions of HMTA and ICCTA discussed below) unambiguously preempts the District Act. However, were the Court to find some ambiguity as to whether the District Act is preempted, the only question is whether the Department of Homeland Security's and Department of Transportation's construction is permissible. *See Nat'l Home Equity Mortgage Ass'n v. Office of Thrift Supervision*, 373 F.3d 1355, 1359 (D.C. Cir. 2004) ("Because the Parity Act does not unambiguously express an intent to preempt all state laws governing AMTs, we must go on to *Chevron* step two and consider whether the agency's interpretation of the Act is a permissible one. We hold it is."). The Supreme Court has held that a court should give "substantial weight" to the "FDA regulations interpreting the scope of [the statute's] pre-emptive effect." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 495-96 (1996). And in *Lawrence County v. Lead-Deadwood School Dist.*, 469 U.S. 256, 262-63 (1985), the Court explained, in connection with the Department of the Interior's view that a South Dakota statute was preempted, that "the interpretation of an agency charged with administration of a statute is entitled to substantial deference." Similarly, in *Oklahoma Natural Gas Co. v. FERC*, 28 F.3d 1281, 1284 (D.C. Cir. 1994), the D.C. Circuit rejected the argument that *Chevron* deference is

inappropriate in the context of federal preemption: "But with the exception of negative exercises of federal authority, all agency legal interpretations have some preemptive effect; no state law in direct contradiction will survive . . . . Hence, we review FERC's interpretation of its authority to exercise jurisdiction over transportation with the familiar *Chevron* framework in mind."

Preemption may be disfavored in other areas of state regulation, but not here. In *United States v. Locke*, 529 U.S. 89, 108 (2000), the Supreme Court explained that an "'assumption' of nonpre-emption is not triggered when the State regulates in an area where there has been a history of significant federal presence." The Court struck down the State of Washington's attempt to impose certain safety measures on ships in Washington's waters in order to mitigate the risk of oil-spill disasters:

> The state laws now in question bear upon national and international maritime commerce, and in this area there is no beginning assumption that concurrent regulation by the State is a valid exercise of its police powers.
>
> . . . .
>
> The appropriate inquiry still remains whether the purposes and objectives of the federal statutes, including the intent to establish a workable, uniform system, are consistent with concurrent state regulation.

Id. at 108, 115. *Locke* is indistinguishable. *See also Southern Pacific Co. v. Arizona*, 325 U.S. 761, 780-84 (1945) (the functioning of interstate railroads is primarily, and historically, a matter of national concern). The congressionally appointed administrators of rail safety and security have spoken. The District Act is preempted by the FRSA.

II. THE DISTRICT ACT IS EXPRESSLY PREEMPTED BY THE HAZARDOUS MATERIALS TRANSPORTATION ACT.

We demonstrated in our Preliminary Injunction Papers that the District Act is preempted under the express preemption provision of the Hazardous Materials Transportation Act ("HMTA"), 49 U.S.C. § 5125(a) and (b). *See* P.I. Mem. at 33-36. The United States confirms this analysis as well. *See* U.S. Statement at 4-6, 9-12, 13-15. As shown above, the view of the United States on the preemptive effect of the HMTA is entitled to great weight.

III. THE DISTRICT ACT IS EXPRESSLY PREEMPTED BY THE INTERSTATE COMMERCE COMMISSION TERMINATION ACT.

As explained in our Preliminary Injunction Papers, the question of whether the District Act is preempted by the ICCTA's express preemption provision, 49 U.S.C. § 10501(b), has been presented to the STB. *See* P.I. Mem. at 14-17; 36-38. When the STB rules, we will lodge its decision with the Court. *See generally CSX Transportation, Inc. v. Georgia Pub. Serv. Comm'n*, 944 F. Supp. 1573, 1584 (N.D. Ga. 1996) (noting that "the STB is uniquely qualified to determine whether state law . . . should be preempted") (internal quotation marks omitted) (alteration in original).

IV. THE DISTRICT ACT WAS NOT AN AUTHORIZED EXERCISE OF LEGISLATIVE POWER UNDER THE HOME RULE ACT.

We argued in our Preliminary Injunction Papers that the District Act extends impermissibly to regulation of interstate commerce, a function of the Federal Government, and seeks to control train operations outside of the District of Columbia, in violation of the limited delegation of powers under the District of Columbia Self-Government and Governmental Reorganization Act (Home Rule Act), Pub. L. No. 93-198, 87 Stat. 774 (1973). *See* P.I. Mem. at 38-40.

V. THE DISTRICT ACT IS *PER SE* INVALID UNDER THE COMMERCE CLAUSE.

The District Act is a paradigmatic example of protectionist legislation that plainly cannot stand under the Commerce Clause. *See* P.I. Mem. at 21-24; U.S. Statement at 15-16. Common sense indicates that our union would not long survive if every state and local jurisdiction had the right unilaterally to force hazardous materials to detour to other jurisdictions. There is no question here that the District Act is protectionist: the District of Columbia has demanded that hazardous materials be detoured around it. Just as New Jersey could not ban out-of-state waste from being disposed within it, *see* P.I. Mem. at 22, and Iowa could not stop double trailers at its borders, *id.* at 23, the District cannot demand its own exclusion from the interstate rail network.

The District's claim to uniqueness gives it no legal right to act unilaterally where others cannot. That claim, like those of all other communities facing the threat of terrorism, must be directed to the Federal Government in support of a request for protections commensurate with the specific terrorist threat in the District. The Federal Government has broad powers to act, and indeed has exercised those powers for the benefit of the District, including through the D.C. Rail Corridor Project. *See* U.S. Statement at 7; P.I. Mem. at 14.

This Court need not undertake any balancing of the relative benefits and burdens of the District Act (which balancing must take into account the interests of all affected parties) in order to grant summary judgment on CSXT's claim of *per se* invalidity under the Commerce Clause. Only if this Court were to conclude that the District Act is not preempted by the FRSA, HMTA, or ICCTA, is not *ultra vires* under the Home Rule Act,

and is not *per se invalid* under the Commerce Clause, would this Court have to proceed to a Commerce Clause balancing analysis. *See* P.I. Mem. at 24-26.[5]

* * *

Once the Court determines that the District Act is null and void on one or all of the five grounds asserted by CSXT (as supported by the Federal Government and the *amici*), the proper relief is for the Court to declare the Act invalid and enter a permanent injunction prohibiting the implementation and enforcement of the Act. *See, e.g., Crosby v. National Foreign Trade Council*, 530 U.S. at 371.

CONCLUSION

For all the foregoing reasons, and those set forth in the earlier papers filed by CSXT, the United States, and the *amici*, CSXT asks that the Court declare the District Act invalid and permanently enjoin its implementation and enforcement. A proposed order is filed herewith.

Respectfully submitted,

Dated: March 8, 2005

/s/ Mary Gabrielle Sprague

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[5] Even then, CSXT submits that the balancing can be decided based on the affidavits in the record without any need for "full blown" discovery or trial. *See* Fed. R. Civ. P. 56(e).